

CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
ARTICLE 25. HEARINGS

Adopt Section 599.893 as follows:

Section 599.893. ~~(Reserved)~~ Scope of Article.

The regulations in this article shall apply to all parties to appeal hearings conducted by the Department of Personnel Administration, its Director and his/her designees.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

Amend the Reference in Section 599.894 as follows:

Section 599.894. Definitions.

Unless the context requires otherwise, the definitions immediately hereinafter set forth govern the construction of this article.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: ~~Section 18670~~ Section 19815.4, Government Code.

Amend the Reference in Section 599.895 as follows:

Section 599.895. Appeal.

“Appeal” means any written request for relief filed with the Department of Personnel Administration and includes “application,” “petition,” and “protest.”

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: ~~Section 18670~~ Section 19815.4, Government Code.

Amend the Reference in Section 599.896 as follows:

Section 599.896. Appellant.

“Appellant” means the person or state agency filing any appeal with the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: ~~Section 18670~~ Section 19815.4, Government Code.

Renumber former Section 599.898 as Section 599.897 and amend the Reference as follows:

~~Section 599.898~~ Section 599.897. Respondent.

“Respondent” means the person or state agency whose interests are adverse to those of the appellant or who will be directly affected by the Department’s decision.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: ~~Section 18670~~ Section 19815.4, Government Code.

Adopt Section 599.898 as follows:

Section 599.898. Administrative Adjudication Provisions.

The following administrative adjudication provisions of the Administrative Procedure Act (APA), which are set forth in Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code are applicable to the Department of Personnel Administration’s appeals hearings as follows:

- (a) Articles 1, 2, 3, 4, 6, 7, 8, 10 and 16 of Chapter 4.5 are applicable.
- (b) Article 9 of Chapter 4.5 is applicable, except Government Code Sections 11440.30 and 11440.50, which are not applicable.
- (c) Article 12 of Chapter 4.5 is applicable except Section 11455.30. Any authority of the Director or a presiding officer is subject to the limitations of the Government Code Sections applicable to the Department of Personnel Administration.
- (d) Article 5 of Chapter 4.5 is not applicable, except Government Code Section 11420.30, which is applicable.
- (e) Articles 11, 13, 14, and 15 of Chapter 4.5 are not applicable.
- (f) Chapter 5 is not applicable.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 11400 – 11420.20, 11425.10 – 11440.20, 11440.40, 11440.45, 11440.60, 11445.10 – 11445.60, 11455.10, 11455.20, 11475 – 11475.70 and Section 19815.4, Government Code.

Amend Section 599.903 as follows:

Section 599.903. Appeal Rights.

Every appeal filed with the Department of Personnel Administration ~~shall be written.~~ It shall state the facts upon which it is based and the relief requested in sufficient detail to enable the Department to understand the nature of the proceeding and the parties concerned. Unless the appeal names some other respondent, the appellant’s appointing power shall be considered the only respondent. The Director shall mail or serve a copy of the appeal to or on the respondent.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: ~~Section 18670~~ Section 19815.4, Government Code.

Amend Section 599.904 as follows:

Section 599.904. Time and Manner of Filing.

Appeals filed with the Department of Personnel Administration shall be subject to the following requirements:

- (a) All appeals shall be filed in writing directly with the Director in accordance with specific time limits prescribed by statute and regulation. An appeal is considered filed on the date it is mailed (postmarked) to the Department or the date it is received, whichever is earlier.
- (b) Except as otherwise provided in the act or these regulations, every appeal shall:
 - (1) be filed with the Department of Personnel Administration within 30 days after the appellant has been served with the notice, report, or document from which the appeal is taken; or
 - (2) if there has been no such notice and none is required, within 30 days after the event happened upon which the appeal is based-; ~~and Upon good cause being shown,~~
- (c) Except as otherwise limited by statute or case law, the Department of Personnel Administration or the Director may allow such an appeal to be filed within 30 days after the end of the period in which the appeal should have been filed if the petitioner demonstrates good cause for a late filing.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: ~~Section 18670~~ Section 19815.4, Government Code; ***Bidwell v. State of California*** (1985) 164 Cal.App.3d 213 and ***Gonzalez v. State Personnel Board*** (1977) 76 Cal.App.3d 364.

Amend the Reference in Section 599.905 as follows:

Section 599.905. Answer.

Unless required by law or these regulations, no answer to the appeal need be filed. If an answer is filed prior to the hearing, a copy thereof shall be mailed by the Director of the Department of Personnel Administration to the appellant. If no answer is filed and none is required, every material allegation of the appeal is in issue.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: ~~Section 18670~~ Section 19815.4, Government Code.

Adopt Section 599.906 as follows:

Section 599.906 Hearings and Decisions.

- (a) The following appeals shall be designated “nonmerit statutory appeals”:
 - (1) requests for reinstatement after automatic resignation;
 - (2) appeals from layoff, demotions, and transfers in lieu of layoff;

- (3) protests of transfer;
- (4) petition to set aside resignation;
- (5) denial of merit salary adjustment;
- (6) appeals of performance appraisal;
- (7) appeals from denial of sick leave; and
- (8) appeals from denial of out-of-class claims.

(b) Except as otherwise provided by statute or excluded by an applicable memorandum of understanding, each nonmerit statutory appeal shall be assigned to a presiding officer for investigation or hearing. The presiding officer assigned shall be the authorized representative of the Director and, as such, will be fully authorized and empowered to set such matters for hearing, grant or refuse extensions of time, issue subpoenas for witnesses, administer oaths, hold hearings, conduct investigations, and perform any and all other acts in connection with such proceedings that may be authorized by law or this article, subject to the following restrictions:

- (1) Any such hearing or investigation shall comply with the administrative procedures for handling subpoenas set forth in Government Code Sections 18672 through 18674, except that all references to the "Board" or "Executive Officer" therein shall be understood to refer to the Director of the Department of Personnel Administration.
- (2) The Director and/or his/her designee shall retain authority to approve, modify, or reject the presiding officer's decision regarding any appeal except as otherwise provided or excluded by a memorandum of understanding.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19815.4, 19996.2, 19842.5, 19997.14, 19994.3, 19996.1, 19832, 19836, 19992 through 19992.14, 19859, 19818.16 and 19818.8, Government Code and **Johnston v. Department of Personnel Administration** (1987) 191 Cal.App.3d 1218.

Adopt Section 599.907 as follows:

Section 599.907. Rehearing.

Within 30 days after service of a copy of a decision following hearing, any party may file a petition for rehearing with the Director. The petition shall be in writing and shall contain all the grounds upon which a rehearing shall be granted.

Within 30 days after such filing, the Director shall serve a copy of the petition on the other parties to the proceeding. Within 60 days after service of the petition for rehearing on the non-requesting parties, the Director shall either grant or deny the petition in whole or in part.

Failure to act upon a petition within this 90-day period shall be deemed a denial of the petition.

If a petition is granted, the Director may set the matter for rehearing before an authorized representative or may reconsider the appeal based solely upon the existing record and arguments provided by the parties.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

Renumber former Section 599.906 as Section 599.908 and amend as follows:

Section ~~599.906~~ 599.908. Dismissal of Appeals Not Brought to Hearing.

Any appeal referred or assigned to the Director of the Department of Personnel Administration shall be dismissed unless it is brought to hearing within three years after such appeal was filed with the Department of Personnel Administration ~~or within three years after the effective date of this section, whichever is later~~, except where the parties have filed a written stipulation specifically extending said three-year period.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections ~~18670 and 18675~~, Section 19815.4, Government Code.

Adopt Section 599.909 as follows:

Section 599.909. (Reserved).

Amend Section 599.910 as follows:

Section 599.910. Decision Becomes Final When.

Unless a proper application for rehearing is made, every decision shall become final 30 days after service by the Department of Personnel Administration of a copy of such decision ~~upon~~ on the parties to the proceeding in which the decision is rendered.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section ~~18670~~ Section 19815.4, Government Code.